

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2019-281-S

IN RE:

Application of Palmetto Utilities,)	
Incorporated for Adjustment (Increase) of	)	SOUTH CAROLINA OFFICE OF
Rates and Charges, Terms and Conditions,	)	REGULATORY STAFF'S
for Sewer Service Provided to Customers	)	RESPONSE IN OPPOSITION TO
in its Richland and Kershaw County	)	APPLICANT'S MOTION TO STRIKE
Service Areas	)	PORTIONS OF PRE-FILED DIRECT
	)	TESTIMONY AND EXHIBITS OF
	)	CHARLES E. LOY, DANIEL P.
	)	HUNNELL, II, AND CHRISTINA L.
	)	SEALE AND FOR IMPOSITION OF
	)	SANCTIONS AND REPLY IN SUPPORT
	)	OF ITS MOTION FOR LEAVE TO FILE
	)	TESTIMONY AND EXHIBITS UNDER
	)	SEAL

The South Carolina Office of Regulatory Staff ("ORS") submits this consolidated Reply and Response in Opposition to the Motion to Strike Portions of the Pre-Filed Direct Testimony and Exhibits of Charles E. Loy, Daniel P. Hunnell, II, and Christina L. Seale and for Imposition of Sanctions ("Motion" or "Motion to Strike") filed by Palmetto Utilities, Incorporated ("Company" or "PUI") on June 5, 2020, and Reply in support of ORS's Motion for Leave to File Testimony and Exhibits Under Seal filed on May 27, 2020. More specifically, ORS seeks to file the unredacted testimony and exhibits of witness Hunnell under seal. A redacted, public version was filed on May 26, 2020. PUI's Motion does not clearly state what portions of the direct testimony and exhibits of Loy, Hunnell, and Seale PUI seeks to strike. However, footnote 4 to the Motion references the following pages, lines, and exhibits that appear to be the basis for the Motion:

Charles E. Loy: p. 6, l.2 – p. 7, l.22 and related footnotes 7, 8, and 9; p. 12, l.14 – p. 13, l.2 and related footnote 12; p. 18, ll.15 – 22, and proposed Exhibit CEL-7;

Daniel P. Hunnell, II: p. 5, l.22 – p. 6, l. 3.; p.7, ll. 9-10; p.7, l.19 – p. 8, l.2; p. 8, ll. 15-19 and related footnote; p. 11, l.1 and Exh. DPH-7; p.12, ll. 1-6 and related footnote; p. 17, n.10; p. 19, ll. 9-15; p. 20, ll. 5-14; p. 22, ll. 3-5, and proposed Exhibits DPH-9, 10, and 11; and

Christina L. Seale: p. 7, l. 22 – p. 8, l.17; p. 8, l.19 – p.9, l. 3; and p. 9, ll. 12-19.

Given the lack of clarity in PUI's Motion, ORS should be given an opportunity to further respond if PUI is seeking and the Commission considers the striking of other portions of these witnesses' testimony.

ORS conducts discovery associated with accomplishing its responsibilities under S.C. Code § 58-4-50, including those related to rate applications such as this case, through the provisions of S.C. Code § 58-4-55. Section 58-4-55(A), in part, provides as follows:

(A) The regulatory staff, in accomplishing its responsibilities under Section 58-4-50, may require the production of books, records, and other information to be produced at the regulatory staff's office, that, upon request of the regulatory staff, must be submitted under oath and without the requirement of a confidentiality agreement or protective order being first executed or sought. The regulatory staff must treat the information as confidential or proprietary unless or until the commission rules such information is not entitled to protection from public disclosure or the public utility or electric cooperative agrees that such information is no longer confidential or proprietary. Unless the commission's order contains a finding to the contrary, all documents or information **designated** as confidential or proprietary pursuant to this subsection are exempt from public disclosure under Sections 30-4-10, et seq., and the regulatory staff shall not disclose such documents and information, or the contents thereof, to any member of the commission or to any other person or entity; provided, however, that, if the commission determines that it is necessary to view such documents or information, it shall order the regulatory staff to file the documents or information with the commission under seal, and such documents or information shall not be available for public inspection unless otherwise ordered by the commission.

Emphasis added. Section 58-4-55(D) states:

(D) Nothing in this section restricts the regulatory staff's ability to serve discovery in a contested case proceeding that seeks the type of documents or information the regulatory staff has obtained in the course of any review, investigation, inspection,

audit, or examination, nor does anything in this section restrict the ability of any public utility or electric cooperative to object to such discovery or to seek relief regarding such discovery, including without limitation, the entry of a protective order. The regulatory staff shall not be required to execute a confidentiality agreement or seek a protective order prior to accessing the documents or information of a public utility or electric cooperative, and such information or documents must be treated as confidential or proprietary unless or until the commission rules such information is not entitled to protection from public disclosure or the public utility or electric cooperative agrees that such information is no longer confidential or proprietary. Unless the commission's order contains a finding to the contrary, all documents or information **designated** as confidential or proprietary pursuant to this subsection are exempt from public disclosure under Section 30-4-10, et seq., and the regulatory staff shall not disclose such documents and information, or the contents thereof, to any member of the commission or to any other person or entity. However, if the commission determines that it is necessary to view such documents or information, it shall order the regulatory staff to file the documents or information with the commission under seal, and such documents or information shall not be available for public inspection unless otherwise ordered by the commission.

Emphasis added. S.C. Code Reg. § 103-517 states that “[f]ull cooperation will be provided by the utility during rate adjustment audits or compliance audits conducted by the ORS or its representatives.”

ORS conducted discovery using § 58-4-55 in the same manner in this case in which it has conducted discovery related to prior rate applications by PUI, affiliates of PUI, and other public utilities. ORS relies heavily on the information obtained from information requests issued under § 58-4-55 to form recommendations. ORS would not be able to make sound recommendations to the Commission if it could not conduct this discovery and use it. Similar to what it did in this case, ORS witnesses frequently discuss and reference in their testimony responses to information requests issued under § 58-4-55. ORS did this in Docket No. 2018-82-S, which was the last rate application by Palmetto Wastewater Reclamation, LLC, an affiliate of PUI, and PUI's last rate application—Docket No. 2017-228-S. Substantial amendments that affect the arguments in the motions before the Commission were made pursuant to § 58-4-55, effective June 28, 2018, while

Docket No. 2018-82-S was pending. Less substantial revisions again were made effective January 1, 2020. In rate cases and other matters since June 28, 2018, not involving PUI or its affiliates, ORS witnesses frequently discuss and reference in their testimony responses to information requests issued under § 58-4-55. See, e.g., Prefiled Direct Testimony of Michael L. Seaman-Huynh, Exhibit MSH-2, p.2, and Exhibit MSH-3 in Docket No. 2019-64-WS; ORS Testimony in Docket Nos. 2019-290-WS, 2018-257-WS, 2018-102-S.

No utility previously has raised the arguments and interpretation of § 58-4-55 PUI asserts in its Motion and Return to ORS's Motion. PUI makes the arguments: (1) ORS improperly disclosed to the Commission and other parties of record information that is as a matter of law confidential because it was produced to ORS under § 58-4-55(A); (2) information produced to ORS under § 58-4-55(A) is not information obtained through discovery and cannot constitute admissible evidence; (3) ORS witnesses selectively discuss, describe, reproduce, reference or attach copies of PUI's books, records, and other information; and (4) ORS seeks to advance the patently specious claim that objections made by PUI in its responses to demands for production under § 58-4-55(A) hindered ORS in its ability to conduct the audit, examination, and inspection in this case. PUI also alleges ORS engaged in overreaching in pursuing demands for production of books, records, and other information. ORS will respond to each of PUI's arguments, in turn.

I. Allegation Regarding Disclosure of Confidential Information

ORS served two initial sets of audit information requests ("AIRs") pursuant to § 58-4-55 on December 17, 2019.¹ Instruction XIV to these requests instructs that "[f]or every page produced to ORS that contains confidential information, the page be marked 'CONFIDENTIAL' in the

¹Prior to these larger, more comprehensive sets of initial AIRs, ORS's Audit Department sent a handful of information requests.

header.”² These requests contain a signature block for an attorney, but they were inadvertently not signed. An ORS attorney served the requests in Microsoft Word format via email, and PUI’s attorney accepted electronic service. The requests are served in Word format so it is easier for the opposing party to copy and paste the requests when preparing responses.

ORS’s Water Operations, Energy Operations, and Audit Departments served follow-up requests to the initial sets of AIRs. These requests stated they were served pursuant to S.C. Code §§ 58-4-55 and 58-5-230 and were electronically signed by an analyst or auditor at ORS involved in the review of the information to which the requests relate. The requests were served by email on the designated contact for the utility with the attorneys for the utility and ORS copied. They did not contain the same instructions that appeared at the beginning of the initial sets of AIRs ORS served.

ORS engages in the same discovery process described above in every rate case, and utilities know it is doing this to gather information to form the basis of its testimony and recommendations. PUI did not object to this process in this case, and it is disingenuous for the Company to now suddenly suggest it did not know ORS was conducting discovery to prepare its case and testimony.

As discussed further, the party asserting confidentiality protections under § 58-4-55 has a statutory duty to identify which specific documents it asserts are entitled to such protections. Any company exercising reasonable diligence to protect information it claims is confidential, proprietary, or trade secret is not going to produce a document to ORS without a specific designation indicating such. Also, it is common practice for confidentiality orders and non-

² See Exhibit 1: ORS’s First and Continuing Audit Information Request for Records and Information, p. 3, para. XIV

disclosure agreements for the party claiming confidentiality to be required to make appropriate designations.³

PUI, in this case, placed confidential designations only on certain information it produced. For example, on January 16, 2020, counsel for PUI specifically designated certain documents responsive to Information Request 8 issued by ORS's Audit Department as confidential. PUI later on February 26, 2020, identified information in response to Information Requests 19.1.c and 19.1.d issued by ORS's Audit Department as confidential. (See Exhibit 2). This information was clearly marked and identified as confidential and hand delivered to ORS Counsel. This information was produced in response to subsequent information requests served after the initial sets of AIRs. PUI, thus, has previously engaged in a course of conduct in this case in recognizing its obligation to place confidentiality designations on or otherwise making ORS directly aware of information it produced to ORS was entitled to such protection.

Nonetheless, PUI now suddenly asserts shortly before the scheduled contested hearing that all of the information it provided to ORS in response to information requests under § 58-4-55 is confidential as a matter of law, regardless of whether it is designated as such, and cannot even be provided to the Commission without PUI's consent or the Commission determining it is necessary to see the information. "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Kiriakides v. United Artists Commc'ns, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994). "However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning

³ Some utilities sign a memorandum of understanding with ORS stating they will place a confidential designation on information they produce that they assert is entitled to such treatment. Such a memorandum of understanding was never discussed between the parties in this case.

when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention.” Id. “If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect.” Id.

The plain language of § 58-4-55(A) and (D) imparts an obligation on utilities to place confidentiality designations on information they assert are entitled to such protection. Both subsections state “Unless the commission’s order contains a finding to the contrary, all documents or information **designated** as confidential or proprietary pursuant to this subsection are exempt from public disclosure under Sections 30-4-10, et seq. . . .” (emphasis added). As it is the utility’s information that is being provided to ORS, this language indicates the utility has an obligation to make appropriate confidentiality designations. It is not reasonable to expect ORS to protect confidential information when a utility itself does not take reasonable precautions to place appropriate confidentiality designations on materials.

Further, the interpretation PUI argues leads to an absurdity that the General Assembly could not have intended. PUI seeks to strike any testimony by witnesses Hunnell, Loy, and Seale that “discuss, describe, reproduce, reference, or attach copies of PUI’s books, records, and other information produced to ORS pursuant to § 58-4-55.” Mot. to Strike p.3 and n.4. Under PUI’s interpretation, PUI is not obligated to make confidentiality designations on information it provides to ORS, all the information PUI produces to ORS is as a matter of law confidential, and ORS cannot “discuss, describe, reproduce, reference, or attach copies of PUI’s books, records, and other information produced” in its filings with the Commission even if it does so under seal. Such an interpretation leads “to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention.” Kiriakides, 312 S.C. at 275, 440 S.E.2d at 366. The purpose of § 58-4-55 is to assist ORS in carrying out its responsibilities under

§ 58-4-50, including its duty to “review, investigate, and make appropriate recommendations to the commission with respect to the rates charged or proposed to be charged by any public utility.” S.C. Code Ann. § 58-4-50(A)(1). Under PUI’s matter of law interpretation, information that is in the public domain would suddenly become confidential as a matter of law simply because it provided the information to ORS in response to an information request under § 58-4-55. PUI could hand ORS a piece of paper stating, “the sky is blue” and it would, as a matter of law, become confidential. An example of this absurd result exists in PUI’s request to strike testimony on pages 12 to 13 of witness Loy’s testimony. In the portion at issue, witness Loy discusses cases PUI cited in response to an information request asking about other cases in which the CPI-U was used to value utility plant. A discussion of such cases clearly does not reveal any confidential Company information. Other examples include PUI’s request to strike witness Hunnell’s testimony on pages 5 to 6 where he discusses sanitary overflows reported to the South Carolina Department of Health and Environmental Control,⁴ on page 8 where he discusses his reliance on certain data PUI provided about its actual number of customers and equivalent residential customers, on page 11 where witness Hunnell has a sentence stating PUI provided certain data in response to AIR 1.31, and a simple reference in a footnote on page 17 to AIR responses ORS used to verify certain information without a discussion of what the AIR responses state. These are examples only, as PUI fails to explain how any of the testimony or exhibits it seeks to strikes discloses confidential or proprietary information, other than to state the information is confidential as a matter of law under S.C. Code § 58-4-55.

Further, while PUI attempts to distinguish discovery under § 58-4-55(D) from a “production of books, records, and other information” under § 58-4-55(A), the same absurdity

⁴ Information about such reported overflows is publicly available at <https://scdhec.gov/wastewater-sewer-overflows>.

results from PUI's interpretation regardless of whether ORS serves information requests or interrogatories and requests for production. The language which forms the basis of PUI's argument appears in both subsections (A) and (D) of § 58-4-55.

The absurdity that results from PUI's interpretation is illustrated by some of what occurred in this case. On May 26, 2020, at around 2:00 pm ORS submitted its direct testimony and exhibits, including witness Hunnell's unredacted testimony and exhibits, for filing through the Commission's electronic filing system. ORS also emailed the testimony and exhibits to the other parties and Hearing Officer David Butler at 2:00 pm. Intervenor Lisa Levine's email address was listed incorrectly so she did not receive the email. Shortly thereafter, PUI's counsel called ORS's counsel complaining that witness Hunnell's testimony had disclosed confidential information. PUI's counsel did not specify which sections of witness Hunnell's testimony he was referencing. Given the claims PUI's counsel was making and out of an abundance of caution, ORS contacted Commission staff and requested they reject the filing. The Commission's staff did this and witness Hunnell's unredacted testimony and exhibits never publicly appeared on the electronic filing system. Given that PUI had not placed confidentiality designations on materials it produced to ORS, other than as described above, ORS's counsel attempted as best he could to redact the testimony that was the source of PUI's complaint. ORS then submitted its testimony for filing again on May 26th, including a redacted version of witness Hunnell's testimony and exhibits. The next day ORS sought leave from the Commission to file witness Hunnell's unredacted testimony under seal.

Despite the efforts of ORS's counsel, PUI claims the redactions to witness Hunnell's testimony do not go far enough and that the testimonies of witnesses Loy and Seale also reveal confidential information. It is not clear to ORS why PUI has chosen to move to strike the portions

of the testimonies of witnesses Loy, Seale, and Hunnell referenced in their Motion when other ORS witnesses also “discuss, describe, reproduce, [or] reference . . . PUI’s books, records, and other information produced to ORS pursuant to § 58-4-55.”⁵ PUI is inconsistent in its own application of the standard it wants the Commission to adopt. ORS hopes PUI is not using its Motion to strategically strike testimony unfavorable to its position on key issues in this case. The only way it appears to ORS that it can comply with the standard PUI wants to create is to provide its testimony to a utility ahead of the filing deadline so the utility can review it and tell ORS what portions it believes would violate § 58-4-55 if filed with the Commission. If ORS disagrees, it would have to file a motion for leave to provide the testimony or exhibits under seal, including explaining why the Commission should review the information at issue, all without discussing, describing, reproducing, referencing, or attaching the information at issue. However, the absurdity of such an interpretation does not end here, as PUI also claims “the statute does not even contemplate that ORS can make such a motion.” Applicant’s Return to ORS’s Mot. Leave to File Testimony and Exhibits under Seal, p. 8. PUI’s interpretation effectively precludes ORS from even making a proffer of the evidence it wishes to place into the record, as exemplified by what PUI is seeking to do with witness Hunnell’s testimony.

ORS’s interpretation of § 58-4-55 is far more reasonable and consistent with the legislative intent behind the statute. It also places ORS in the same position as other parties. Under ORS’s interpretation, utilities have an obligation to place appropriate confidentiality designations on information produced to ORS. ORS can challenge the confidentiality designation or if it wishes to file testimony based on information another party has designated confidential, it can do so under

⁵ For example, see Prefiled Direct Testimony of David C. Parcell, p. 18, n. 14; p. 19, n. 15; p. 21, n. 16.

seal. This is the same process followed by every other party to proceedings before the Commission.

In addition, all the information requests ORS served subsequent to the initial two sets ORS served state they are served pursuant to S.C. Code §§ 58-4-55 and 58-5-230. Section 58-5-230 states “the books and accounts of all public utilities shall be subject to the examination of the regulatory staff at any time.” This statute contains none of the language forming the basis for PUI’s argument.

The vast majority of the testimony PUI seeks to strike is solely on the basis of confidentiality. The only basis PUI presents for seeking to strike portions of witness Seale’s testimony is confidentiality.⁶ Confidentiality is also the sole basis for most of the portions of witnesses Loy’s and Hunnell’s testimony PUI seeks to strike. The only exceptions are page 18, lines 15 through 22, and exhibit CEL-7 to witness Loy’s testimony and page 20, lines 5 through 14, and exhibit 10 to witness Hunnell’s testimony.⁷ PUI does not attempt to explain how the information disclosed in ORS’s testimony is confidential, proprietary, or harmful to their business interest to be in the public domain. To the extent PUI subsequently does seek to provide such explanations, ORS should be given an opportunity to respond. PUI simply argues the information

⁶ The portions of witness Seale’s testimony referenced in PUI’s Motion mention AIR No. 1.37 and request numbers 8, 12, and 16 issued by the Audit Department. AIR No. 1.37 was part of the initial sets of AIRs that contained the instruction for the Company to place confidentiality designations on any such information produced. Witness Seale testifies the relevant portion of the Company’s response to request number 8 issued by the Audit Department simply referred ORS back to the response to AIR 1.37. There was no confidentiality designation on the information witness Seale discusses related to requests 12 and 16 issued by the Audit Department.

⁷ None of the information PUI produced in response to the information requests referenced in the portions of witness Loy’s testimony PUI seeks to strike was designated confidential. Pages 6, 7, 12 and 13 of witness Loy’s testimony discuss not only information requests responses by PUI but also is responsive to claims PUI makes in its direct testimony related to assets acquired from the City of Columbia and the proper accounting treatment for expansion fees. See Direct Testimony of Witnesses Harold Walker, pp. 1-3; Direct Testimony of Gary E. Walsh, pp. 3-6; Donald J. Clayton, pp. 4-5; William Crawford, p. 3; Mark S. Daday, pp. 6-7. ORS asserts it would be improper to strike such testimony directly related to issues in this case and adjustments ORS proposes. Likewise, none of the information request responses witness Hunnell discusses in his testimony were designated confidential by the Company.

is confidential as a matter of law. Even if the Commission were to accept PUI's interpretation, striking the testimony at issue is an unduly harsh sanction, particularly given the novelty of PUI's argument and the fact it has presented no explanation of how the information at issue is confidential other than it was given to ORS under § 58-4-55.

II. Responses to Information Requests Issued under Section 58-4-55 Can Be Admissible Evidence in the Same Manner as Responses to other Forms of Discovery Requests.

In its Motion to Strike and Response to ORS's Motion for Leave to File witness Hunnell's testimony under seal, PUI argues there is a distinction between a production of books, records, and other information under § 58-4-55(A) and discovery under § 58-4-55(D). In reality, PUI is attempting to draw a line where none actually exists.⁸ PUI argues one distinction is discovery requests have to be signed in accordance with Rule 11 of the South Carolina Rules of Civil Procedure. See S.C. R. Civ. P. 26(g)(1). Rule 11 states "the written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay." ORS submits the same requirement exists under S.C. Code § 58-4-55 and does not dispute its employees must comply with Rule 11 when issuing information requests. See S.C. Code § 58-4-55(B) (stating the Commission may terminate the scope of an inspection, audit, or examination "if it finds that such inspection, audit, or examination is arbitrary, capricious, unnecessary, unduly burdensome, or unrelated to the regulated operations of the public utility").

⁸ In its communications with ORS, PUI itself used the term "discovery" to describe information requests ORS issued pursuant to § 58-4-55. Additionally, PUI's March 19, 2020 Motion for Stay also refers to "discovery." These communications and prior conduct conflict with the new and novel legal theories now presented to the Commission. See Ex. 3

PUI also argues, unlike the Rules of Civil Procedure, there is no provision of § 58-4-55 that allows for answers to information requests to be admitted into evidence. PUI cites to Rules 26(d) and 26(g)(1) in support of the proposition that discovery responses can be admitted into evidence. However, neither referenced subsection of Rule 26 expressly states this. In fact, the Rules of Civil Procedure state that information can be discoverable even if the “information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” S.C. R. Civ. P. 26(b)(1). Indeed, assuming the scope of discovery is far narrower under § 58-4-55 than Rule 26, as PUI argues, it is far more likely information obtained through § 58-4-55 will be admissible than that obtained through Rule 26.

PUI is correct that ORS did not file its information requests with the Commission. However, PUI suffered no prejudice as a result of this non-filing and striking ORS’s testimony or taking other punitive action because of it is unwarranted. If the Commission directs ORS to file all of its information requests and the Company’s responses thereto publicly or under seal, ORS has no objection to doing so.

It has long been the practice of the Commission to allow into the record responses to and testimony regarding information requests issued under § 58-4-55. There is no per se rule that responses to information requests are admissible just as there is no per se rule that responses to interrogatories, requests for production, and requests for admission are admissible. Rather, the admission of such evidence is within the province of the Commission. The only objection PUI makes to most of the testimony it seeks to strike in its Motion is confidentiality or its incorrect position that responses to information requests cannot be discussed in testimony or admitted into evidence. Furthermore, it is in the public interest for utilities to have the same obligations when responding to information requests under § 58-4-55 as they do when responding to interrogatories,

requests for production, and requests for admission. In fact, the information requests ORS serves simply state that they are served pursuant to § 58-4-55, they do not indicate whether they are served under subsection (A) or (D), so in effect both subsections apply. It is entirely reasonable for ORS to conduct discovery in the form of an examination of books, records, and other information during the course of a rate proceeding. See Black's Law Dictionary (3d Pocket Ed. 2006) (defining "discovery" as "1. The act or process of finding or learning something that was previously unknown. 2. Compulsory disclosure at a party's request of information that relates to the litigation.").

III. Other Arguments PUI Advances in Support of Its Motion to Strike and Return to ORS's Motion

PUI argues ORS witnesses "selectively discuss, describe, reproduce, reference or attach copies of PUI's books, records, and other information." PUI's Mot. to Strike p. 3. ORS disagrees with PUI's assertions, but to the extent PUI asserts this occurred, the Company has the ability through rebuttal and cross-examination to address such concerns. This argument is not an appropriate basis for striking ORS's testimony. As discussed, ORS is prepared to provide all of the information requests it served and PUI's responses to them if the Commission requests them.

PUI asserts that through witnesses Hunnell's and Loy's "improperly filed testimonies and exhibits, ORS seeks to advance the patently specious claim that objections made by PUI in its responses to demands for production under § 58-4-55(A) hindered ORS in its ability to conduct the audit, examination, and inspection in this case." PUI's Mot. to Strike p. 3. PUI's assertion is incorrect.

Witness Loy does not testify in the manner PUI asserts. Rather, the portion of his testimony PUI references in support of its argument is as follows:

Q. DO YOU BELIEVE THE COMPANY RESPONDED TO YOUR DATA REQUESTS IN A MANNER THAT ALLOWED YOU TO FULLY UNDERSTAND THEIR POSITION?

- A.** Not completely. I asked several questions related to the topics and issues I discussed above including the Company's interpretation of the USOA, data in the OCS, usage of the CPI-U, and the Company's information related to CIAC. The Company objected to all the requests presented in ORS Water Operations Request #28 (included as Exhibit CEL-7) and did not provide substantive responses to any of them.

This is appropriate factual testimony. Witness Loy provided certain suggested questions to ORS that he wanted to ask PUI related to topics discussed in PUI's direct testimony. ORS served requests for this information. PUI objected to the questions as opposed to answering them. For questions 1 through 6 to Water Operations Request #28, PUI states at the end of its response that the referenced pre-filed witness testimony and referenced document speaks for itself, suggesting that to the extent it has an answer it is already contained in the testimony and document referenced in the request. All the questions in Water Operations Request #28 would be appropriate subjects for cross-examination. To the extent a witness attempted to provide additional information beyond that provided in response to and within the scope of the questions in Water Operations Request #28, ORS should be able to use the responses to Water Operations Request #28 as evidence to point out the inconsistency and to potentially seek other appropriate relief.

The portion of witness Hunnell's testimony PUI references is contained in the redacted portions of the publicly filed version of witness Hunnell's testimony. Hunnell Direct Pre-filed Testimony, p. 20, ll. 5-18. Consequently, at this point, ORS has not even been able to make a proffer of that testimony. Given the arguments PUI makes in its Motion, ORS is hesitant to discuss in great detail the testimony at issue. This is another absurdity that results from PUI's interpretation of § 58-4-55. However, given that PUI discusses redacted portions and that PUI is the party claiming the protections of § 58-4-55, ORS concludes a response is appropriate. Witness

Hunnell testifies that PUI objected to certain information requests issued by the Water Operations Department and attaches copies of those information requests and responses as exhibit DPH-10. Hunnell Direct Pre-filed Testimony, p. 20, ll. 5-18. Such discussion is relevant and appropriate testimony for the same reasons the above-referenced sections of witness Loy's testimony are relevant and appropriate. However, witness Hunnell also states in addition to objecting to Water Operations Request No. 29, PUI provided information that is relevant to the issues witness Hunnell discusses in his testimony related to Account 114. ORS asserts that information should be presented to and taken into consideration by the Commission.⁹

Finally, PUI relies upon Order No. 2018-708 in Docket No. 2018-2-E to argue that portions of witnesses Loy's and Hunnell's testimony at issue are improper because ORS did not file a motion to compel. As an initial matter, the responses to information requests attached as exhibits to testimony of witnesses Hunnell and Loy do not contain only objections. Further, the Commission in Order No. 2018-708 simply stated "the proper mechanism to require a party to provide properly discoverable information is a motion to compel." The Commission did not rule that the type of testimony and exhibits ORS seeks to offer in this proceeding is improper or should be struck. Even if the Commission had made such a ruling in the past, the Commission, as an administrative agency, "is generally not bound by the principle of stare decisis but it cannot act arbitrarily in failing to follow established precedent." See 330 Concord St. Neighborhood Ass'n v. Campsen, 309 S.C. 514, 517-18, 424 S.E.2d 538, 539-40 (Ct. App. 1992).

⁹ PUI asserts on page 5 of its Motion to Strike that many of the information requests attached to witness Loy's testimony as exhibit CEL-7 and witness Hunnell's testimony as exhibits DPH-10 seek attorney work product. However, the information requests to which PUI asserts work product objections ask about specific portions of and analyses contained in testimony by PUI's witnesses. It is unclear to ORS how such questions seek PUI's attorney work product. Indeed, if one of PUI's witnesses based their testimony on attorney work product, that work product would no longer be protected and would be an appropriate subject of discovery.

IV. ORS Did Not Overreach or Abuse the Process for Pursuing Demands for Books, Records, and other Information.

ORS asserts that the Affidavit of Lauren B. Hutson attached as Exhibit A to the Return and to the Motion is misleading.¹⁰ PUI seeks to portray ORS as overbearing and overreaching, claiming ORS made an excessive number of requests, some of which were duplicative or irrelevant. PUI further insinuated that ORS erred by continuing to submit discovery requests after the February 19, 2020 meeting and after the stay granted by the Commission on March 25, 2020.

ORS submitted its requests for production under S.C. Code Ann. § 58-4-55 and/or § 58-5-230. Neither section limits the amount of requests ORS may submit to utilities in a rate proceeding, but S.C. Code Ann. § 58-4-55 does provide relief for a utility if the scope of ORS's examination is arbitrary, capricious, unnecessary, unduly burdensome, or unrelated to the regulated operations of the public utility. See S.C. Code Ann. § 58-4-55(B). Here, PUI did not make any such petition of the Commission. Additionally, under Rule 29 of the South Carolina Rules of Civil Procedure, PUI could have sought to enter a stipulation with ORS to govern the discovery procedures used. See SCRCR Rule 29. Through its filings, PUI would have the Commission believe that the parties came to such an agreement with its characterization of the February 19, 2020 meeting. See Affidavit of Lauren B. Hutson, Para. 4. PUI's recollection of that meeting is inaccurate. The meeting was to address an ongoing discovery issue about a specific line of questioning ORS was submitting to PUI. While there may have been discussions about ORS's discovery requests generally, no agreement for ORS to limit or cease serving discovery on PUI was reached or even discussed. See Ex. 4: Affidavit of Ryder Thompson, Director of ORS Utility Rates and Services.

¹⁰See Exhibit 4: Affidavit of Ryder Thompson, Director of Utility Rates and Services, SC Office of Regulatory Staff describes the meeting and the desire of ORS to resolve the outstanding issue that ORS was unable to reconcile PUI's balance sheet Account 114 with the Application and with the information provided by PUI in response to ORS's requests for information.

PUI also alleges ORS should not have continued to submit discovery requests after the Commission stayed the proceeding on March 25, 2020. See Hearing Officer Directive Order No. 2020-259. Regardless, ORS only sent two requests after the stay was ordered, one from audit and one from water operations. PUI answered both in a timely fashion and did not object to ORS serving the discovery while the stay was in place.¹¹ PUI was not prejudiced by ORS serving discovery during the stay and if desired, PUI could have objected or informed ORS it would not respond until the stay was lifted. Additionally, the responses attached as exhibits to the testimonies of witnesses Loy and Hunnell were served prior to the stay, and the deadlines for responding to them were prior to the stay.

Typically, in a rate case, ORS serves an initial request for production pursuant to § 58-4-55 on the utility through counsel, or through its audit department. The utility's responses may fully answer ORS's initial questions, or the responses may create the need for follow up and additional questions, which can greatly depend upon how the utility responds. The number of requests served on PUI in this Docket is comparable to, if not less than, what is served on other similarly situated utilities.¹² ORS has identified only five questions that are duplicative or identical. ORS offers its sincere apology for the inadvertent and unintentional use of certain duplicate questions in the course of preparing testimony and recommendations in this contested case proceeding. ORS's instructions stated that if the information requested was previously provided to ORS, the Company shall merely note that it was so provided.¹³ PUI complied with these instructions. Similar lines of

¹¹ ORS's Audit Request had four questions and the Water Operations Request had one, it appears PUI included the subparts to the first Audit Request question to reach a total of seven.

¹² For example, ORS reviewed the number of requests issued in Docket No. 2019-290-WS and found that it issued significantly less in this docket.

¹³ See Exhibit 1: ORS's First and Continuing Audit Information Request for Records and Information, p. 2, para. III.

questioning were due to PUI's failure to fully respond initially or PUI's response resulted in the need for further questioning along the same lines.

V. Even if the Commission Grants PUI's Motion to Strike, Sanctions Should Not Be Awarded.

PUI asserts the Commission is authorized to impose sanctions under S.C. Code § 58-3-250(A)(2), S.C. Code Regs. § 103-835 and Rules 26(c) and 37 of the South Carolina Rules of Civil Procedure. PUI's request for sanctions under Rules of South Carolina Rules of Civil Procedure related to discovery is entirely contradicted by its position that information requests under § 58-4-55 are not discovery. Section 58-3-250(A)(2) simply states "[a]ll final orders and decisions of the commission must be sufficient in detail to enable the court on appeal to determine the controverted questions presented in the proceedings and must include . . . the appropriate rule, order, sanction, relief, or statement of denial thereof." Regulation § 103-835 states "[t]he S.C. Rules of Civil Procedure govern all discovery matters not covered in Commission Regulations." However, again, PUI argues the information requests ORS issues under § 58-4-55 are not "discovery." PUI's rationale for seeking discovery sanctions for conduct it asserts is not discovery is unclear to ORS.

Even if PUI had cited to a statute or regulation granting the Commission the authority to award the sanctions it seeks, the sanctions sought should be denied. One sanction PUI requests is for ORS to reimburse PUI the \$36,851.25 paid by it to witness Loy's employer for witness Loy's services to ORS after the filing of this case and that PUI should be relieved of the obligation to pay any further fees charged by witness Loy's employer. This requested sanction is completely out of proportion and unrelated to the improper conduct PUI alleges. There also is no causal relationship between the amount PUI seeks here and the improper conduct it alleges. PUI asserts that such a sanction will avoid witness Loy's fees from being passed on to PUI's customers.

Witness Loy's testimony relates to a key issue in this case, and if the Commission accepts his recommendations, ratepayers will save far more money than the fees he has charged.

PUI requests that it be awarded its reasonable attorney fees associated with pursuing its Motion. This is a sanction that can be awarded under Rule 37 of the South Carolina Rules of Civil Procedure in certain circumstances. More specifically, Rule 37 provides for sanctions related to a party pursuing a motion to compel, failing to comply with a court order, responses to requests for admission, failures to attend a deposition, and failure to participate in the framing of a discovery plan. None of these circumstances exist here.

Sanctions are inappropriate for a multitude of other reasons, including the novelty of the arguments PUI makes in its Motion, PUI failed to place confidential designations on information it now claims is confidential, and PUI has not explained how any information disclosed in the testimony at issue has caused it business harm or is confidential, other than its position the information is confidential as a matter of law under S.C. Code § 58-4-55.

VI. Should the Commission Rule That ORS's Testimony and Exhibits in Question Will Not Be Stricken, Allowing PUI an Extra Bite at the Apple Would be Unjust

PUI requests that in the event the Commission determines the testimony of witnesses Loy, Hunnell, and Seale and exhibits of witnesses Loy and Hunnell should not be stricken, PUI be permitted to file additional rebuttal testimony and deny ORS the opportunity to respond. See Motion to Strike, p. 7. In essence, PUI is asking for sanctions, even if its Motion for Sanctions is denied. ORS asserts this request should be denied, along with the rest of the Motion. The Commission effectively would be sanctioning ORS for doing nothing wrong. Additionally, through its rebuttal testimony filed June 9, 2020, PUI already responded to the portions at issue of the direct testimonies and exhibits of witnesses Loy, Hunnell, and Seale. The acceptance of rebuttal

evidence without surrebuttal evidence would be unfair and unduly prejudicial to ORS, as ORS would not be allowed an adequate opportunity to contest said evidence. ORS asserts it would be an abuse of the Commission's discretion to accept such rebuttal testimony.

CONCLUSION

For the reasons set forth herein, in ORS's Motion for Leave to File Testimony and Exhibits Under Seal, and at any hearing held by the Commission regarding this matter, ORS asserts that PUI's Motion to Strike Portions of the Pre-Filed Direct Testimony and Exhibits of Charles E. Loy, Daniel P. Hunnell, II, and Christina L. Seale and for Imposition of Sanctions should be denied and that ORS's Motion for Leave to File Testimony and Exhibits of Witness Hunnell Under Seal should be granted. If the Commission decides the redacted portions of witness Hunnell's testimony and exhibits are not entitled to protection from public disclosure, ORS should be granted leave to publicly file the unredacted testimony and exhibits.

Respectfully submitted,

s/Christopher M. Huber

Jeffrey M. Nelson, Esquire
Christopher M. Huber, Esquire
Jennifer R. Pittman, Esquire
South Carolina Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29201
(803) 737-0800
jnelson@ors.sc.gov
chuber@ors.sc.gov
jpittman@ors.sc.gov

Attorneys for the South Carolina Office of
Regulatory Staff

IN RE: Application of Palmetto Utilities,) South Carolina Office of
Incorporated for Adjustment of Rates and) Regulatory Staff's First and
Charges, Terms and Conditions, for Sewer) Continuing Audit Information
Service Provided to Customers in its Richland) Request for Records and
and Kershaw County Service Areas) Information

As used in these audit requests, "identify" means, when asked to identify a person, to provide the full name, business title, address and telephone number. As used in these audit requests, "address" means mailing address and business address. When asked to identify or provide a document, "identify" and "provide" mean to provide a full and detailed description of the document and the name and address of the person who has custody of the document. In lieu of providing a full and detailed description of a document, you may attach to your responses a copy of the document and identify the person who has custody of it. When the word "document" is used herein,

it means any written, printed, typed, graphic, photographic, or electronic matter of any kind or nature and includes, but is not limited to, statements, contracts, agreements, reports, opinions, graphs, books, records, letters, correspondence, notes, notebooks, minutes, diaries, memoranda, transcripts, photographs, pictures, photomicrographs, prints, negatives, motion pictures, sketches, drawings, publications, and tape recordings.

Wherever in this audit request a masculine pronoun or possessive adjective appears, it refers to both males and females in accordance with traditional English usage.

IT IS THEREFORE REQUESTED:

- I. That all information shall be provided to ORS in the format requested.
- II. That all responses to the audit requests below be labeled using the same numbers as used herein.
- III. That if any information requested has been previously provided to ORS, then that information will be noted as such along with the manner, format, and date the information was provided.
- IV. That if information requested is found in other places or other exhibits, reference shall not be made to those; instead, that the information be reproduced and placed in the audit request in the appropriate numerical sequence.
- V. That any inquiries or communications relating to questions concerning clarification of the information requested below should be directed to Kyle Maurer Sr, PhD, PE [803.737.0959], Jeff M. Nelson, Esquire [808.737.0823], Christopher Huber, Esquire [803.737.5252], Jenny R. Pittman, Esquire [803.737.0794], or Christina Seale [803.737.0629] of ORS.
- VI. That this entire list of questions be reproduced and included in front of each set of responses.
- VII. That each question be reproduced and placed in front of the response provided.
- VIII. That unless otherwise specified the Company provide three (3) paper copies/binders of responses to ORS. In addition, and if technically feasible, it is requested that the Company provide one (1) electronic version of the responses.
- IX. That all exhibits be reduced or expanded to 8 ½" x 11" format, where practical.

- X. If the response to any audit request is that the information requested is not currently available, please state when the information requested will be available and provided to the ORS. This statement is not a waiver of the deadline for all other responses.
- XI. That in addition to the signature and verification at the close of the Company's responses, the Company witness(es) or employee(s) or agent(s) responsible for the information contained in each response be indicated.
- XII. This audit request shall be deemed to be continuing so as to require the Company to supplement or amend its responses as any additional information becomes available.
- XIII. For information requested herein where the information is kept, maintained, or stored using spreadsheets, please provide electronic versions of the spreadsheets, including the formulas used and embedded in the spreadsheet.
- XIV. For every page produced to ORS that contains confidential information, the page be marked "CONFIDENTIAL" in the header.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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***ALSO ADMITTED IN CALIFORNIA

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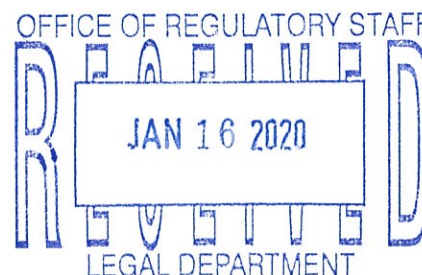
133 RIVER LANDING DRIVE
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CHARLESTON, SC 29492

AREA CODE 843
TELEPHONE 619-4426
FAX 619-4430

January 16, 2020

VIA HAND DELIVERY

Jeffrey M. Nelson, Esquire
Chief Counsel and Director of Legal Services
SC Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29201



RE: Application of Palmetto Utilities, Inc. for an adjustment in sewer service rates and rate schedule modifications before the Public Service Commission of South Carolina; Docket No. 2019-281-S

Dear Mr. Nelson:

Following up on our recent communications, enclosed please find a flash drive containing the confidential documents responsive to ORS Audit Staff Audit Information Requests 8.

As previously discussed, these documents are internally sensitive and confidential and that is the reason they are being provided by me and not by personnel associated with the rate case.

(continued ...)

Mr. Jeffrey M. Nelson, Esq.
January 16, 2020
Page 2 of 2

If you have any questions, or if you need any additional information, please do not hesitate to contact us. Thanking you and Audit Staff for your assistance and cooperation, I am

Sincerely,

WILLOUGHBY & HOEFER, P.A.



John M. S. Hoefer

JMSH/cgc
Enclosure

cc: Mr. Mark Daday
(w/out encl.)

WILLOUGHBY & HOEFER, P.A.
ATTORNEYS & COUNSELORS AT LAW

EXHIBIT 2

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
CHAD N. JOHNSTON
JOHN W. ROBERTS
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT CARROLL
R. WALKER HUMPHREY, II***
ANDREW R. HAND****
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SPECIAL COUNSEL

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**ALSO ADMITTED IN WASHINGTON, D.C.

***ALSO ADMITTED IN CALIFORNIA

****ALSO ADMITTED IN NORTH CAROLINA



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AREA CODE 843
TELEPHONE 619-4426
FAX 619-4430

February 26, 2020

VIA HAND DELIVERY

Jeffrey M. Nelson, Esquire
Chief Counsel and Director of Legal Services
SC Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29201

RE: Application of Palmetto Utilities, Inc. for an adjustment in sewer service rates and rate schedule modifications before the Public Service Commission of South Carolina; Docket No. 2019-281-S

Dear Mr. Nelson:

Following up on our conversation today, enclosed please find a flash drive containing the documents responsive to ORS Audit Staff Audit Information Request 19.1.c and d.

These documents are internally sensitive and confidential and that is the reason they are being provided by me and not by personnel associated with the rate case. These documents should not be discussed with the Company personnel and any questions regarding same should be directed to me.

(continued ...)

Jeffrey M. Nelson, Esquire
February 26, 2020
Page 2 of 2

If you have any questions, or if you need any additional information, please do not hesitate to contact us. Thanking you and Audit Staff for your assistance and cooperation, I am

Sincerely,

WILLOUGHBY & HOEFER, P.A.



John M. S. Hoefer

JMSH/cgc
enclosure

cc: Mr. Mark Daday
(w/out encl.)

Pittman, Jenny

From: John Hoefer <JHoefer@Willoughbyhoefer.com>
Sent: Tuesday, December 17, 2019 5:09 PM
To: Pittman, Jenny
Cc: Nelson, Jeff; Huber, Christopher
Subject: [External] RE: 2019-281-S

Jenny:

Per our conversation, if ORS will agree that PUI will have no discovery responses due from December 21 through January 6, PUI will consent to a motion by ORS to alter the schedule as follows:

PUI Direct: March 17, 2020
 ORS Direct: April 7, 2020
 PUI Rebuttal: April 14, 2020
 ORS Surrebuttal: April 21, 2020
 Hearing: April 28, 2020 (carry over into the 29th if needed)
 Proposed Orders: May 13, 2020
 Order Issued: May 27, 2020

As also discussed, PUI will have the responses to the discovery now due by December 20 ready for delivery later this week. Thank you for sending me the first and second AIRs due January 10 and 17, respectively. I have forwarded them on to PUI>

Let me know if you are in agreement with the foregoing. If so, you can send the letter to the PSC and indicate that PUI consents.

Thanks.

John

From: John Hoefer
Sent: Saturday, December 14, 2019 12:20 PM
To: Pittman, Jenny <jpittman@ors.sc.gov>
Cc: Nelson, Jeff <jnelson@ors.sc.gov>; Huber, Christopher <chuber@ors.sc.gov>
Subject: RE: 2019-281-S

Jenny: Thanks. I am checking with PUI and will get back to you on Monday. Have a nice weekend.

John

From: Pittman, Jenny <jpittman@ors.sc.gov>
Sent: Friday, December 13, 2019 2:21 PM
To: John Hoefer <JHoefer@Willoughbyhoefer.com>
Cc: Nelson, Jeff <jnelson@ors.sc.gov>; Huber, Christopher <chuber@ors.sc.gov>
Subject: 2019-281-S

John,

Pittman, Jenny

From: John Hoefer <JHoefer@Willoughbyhoefer.com>
Sent: Wednesday, January 8, 2020 12:42 PM
To: Pittman, Jenny
Subject: RE: [External] RE: 2019-281-S

Jenny:

Just following up on this. Please advise at your earliest convenience on the copying associated with the AIRs.

Also, I understand from PUI that Tina Seale has indicated that no hard copy is required for the response to Audit Department Request #1. Please advise if my understanding is incorrect.

Thanks.

John

From: John Hoefer
Sent: Tuesday, January 7, 2020 10:58 AM
To: 'Pittman, Jenny' <jpittman@ors.sc.gov>
Subject: RE: [External] RE: 2019-281-S

Jenny:

No apologies needed. There is a lot going on here and I am certain I am contributing to the confusion. I do have some questions:

My observation is that ORS is now sending three different types of discovery requests. To recap, PUI has received the following:

- Audit Department Requests Numbers 1-8. Some of these specifically ask for hard copies in addition to electronic copies (e.g., #1) and others do not specify one way or the other (e.g., ## 2, 3, 4, 5, 6, 7 and 8). Am I correct that the only hard copy of the responsive documents that ORS wants from these requests is for #1?
- Water Operations Requests Numbers 1-6. Each of these specify production electronically.
- Two Audit Information Request for Records and Information (which I think is what you are referring to as "AIRs"), containing the instruction "That unless otherwise specified the Company provide three (3) paper copies/binders of responses to ORS. In addition, and if technically feasible, it is requested that the Company provide one (1) electronic version of the responses," and consisting of
 - First Request Numbers 1.1 through 1.42
 - Second Request Numbers 2.1 through 2.58.

Please let me know if any of the foregoing is incorrect.

Finally, I assume ORS will agree that PUI is entitled to recover the copying costs associated with the AIRs in rate case expense. Please advise if that is not the case.

Thanks.

John

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
Docket No. 2019-281-S

IN RE: Application of Palmetto Utilities, Incorporated)
 for Adjustment of Rates and Charges, Terms)
 and Conditions, for Sewer Service Provided to)
 Customers in Its Richland and Kershaw)
 County Service Areas)
)

AFFIDAVIT

Personally appeared before me, Ryder C. Thompson, who first being duly sworn, testifies as follows:

1. My name is Ryder C. Thompson. My business address is 1401 Main Street, Suite 900, Columbia, South Carolina 29201. I am employed by the State of South Carolina as the Director of Utility Rates and Services for the South Carolina Office of Regulatory Staff ("ORS").
2. I am a resident of South Carolina. I am over 18 years old.
3. I have personal knowledge of the truth of the facts stated herein.
4. On February 19, 2020 at 2:00 p.m., I attended the meeting at the ORS's offices at 1401 Main Street, Suite 900, Columbia, South Carolina 29201 between ORS and Palmetto Utilities, Inc. ("PUI") and their counsel. This meeting was identified in PUI's Affidavit of Lauren B. Hutson in support of its Motion to Strike Portions of the pre-filed testimony and exhibits of Charles E. Loy, Daniel P. Hunnell, II, and Christina L. Seale and for imposition of sanctions and in its Return to ORS's Motion to file testimony and exhibits under seal. In addition to myself, the Executive Director Nanette Edwards, Chief Legal Counsel Jeff Nelson, Counsel Jenny Pittman,

and Counsel Christopher Huber were in attendance for ORS. Present at this meeting for PUI were Mark S. Daday, President and Chief Financial Officer of Ni Pacolet Milliken Utilities, LLC., Lauren B. Hutson, Manager of Financial Planning and Analysis of Ni Pacolet Milliken Utilities, LLC. and Legal Counsel John M.S. Hoefer. This meeting was scheduled to discuss accounting and discovery related to Docket No. 2019-281-S. PUI and ORS provided topics for discussion during the meeting. During the meeting, representatives for PUI complained that ORS was issuing too many requests for data and information. ORS listened to PUI's concerns. ORS did not agree to limit ORS requests for additional information. ORS discussed with the representatives for PUI that ORS was unable to reconcile PUI's balance sheet Account 114 with the Application and with the information provided by PUI in response to ORS's requests for information. Representatives for PUI agreed to review Account 114 and provide additional information to ORS. During the meeting, I was assigned an action item to schedule a follow-up meeting with the technical experts (i.e. Mark Daday, Lauren Hutson and ORS Senior Regulatory Analyst Dan Hunnell) to discuss the reconciliation of Account 114. At the close of the meeting, both parties were cordial.

5. On Friday, February 21, 2020, I scheduled a follow-up meeting for Tuesday, February 25, 2020 at the ORS Offices and sent the meeting invite to Mark Daday and Lauren Hutson from PUI, as well as, Dan Hunnell, Chief Operating Officer Dawn Hipp, and Legal Assistant Victoria Watts from ORS (See Attachment (A)- Meeting request sent by Ryder Thompson). On Friday February 21, 2020, I received a response from Mark Daday via e-mail stating "We have out of office meetings next week. A few times open. Lauren is sending the reconciliation you requested in Wednesday's meeting. What is the subject of the meeting?" (See Attachment (B) -Mark Daday's response to meeting request e-mail). I replied to Mr. Daday via e-mail on Friday, February 21, 2020 stating "This was a follow up to our previous meeting. I had

an action item to set up a call or face to face meeting with the tech experts. Please let me know what your preference is and I will try to schedule it. Tuesday is our preferred day” (See Attachment (C) -Ryder Thompson’s response e-mail to Mark Daday).

6. I did not receive a call or acceptance from a representative from PUI regarding the meeting invite. On Monday, February 24, 2020, one day before the proposed meeting, I contacted ORS Chief Legal Officer Jeff Nelson and let him know that representatives for PUI had not responded to the ORS meeting request.

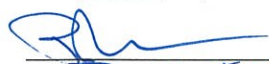
FURTHER AFFIANT SAYETH NOT.



Ryder C. Thompson

SWORN to and subscribed before me

this 11th day of June, 2020



Pamela J. McMullan
Notary Public for South Carolina

My Commission Expires: 4/11/2027



Thompson, Ryder

Subject: PUI Meeting
Location: Edisto Conference Room

Start: Tue 2/25/2020 1:00 PM
End: Tue 2/25/2020 2:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Thompson, Ryder
Required Attendees: Dawn Hipp; Hunnell, Daniel; Mark Daday; Lauren Hutson; _RegStaff - Edisto Conference Room; Watts, Victoria

Proposed PUI meeting with technical experts. Please let me know if you have any issues with this meeting time.

Thank you



Ryder Thompson
Director, Utility Rates & Services
Office of Regulatory Staff

 RTHOMPSON@ORS.SC.GOV  (803) 737-0664

 1401 Main Street, Suite 900
Columbia, SC 29201

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, transmission, dissemination or other use of, or taking any action in reliance upon this information, by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from all computers. Thank you.

NOTE THE CHANGE IN EMAIL ADDRESS. PLEASE UPDATE YOUR RECORDS.

Thompson, Ryder

From: Mark Daday <mdaday@NiAmerica.com>
Sent: Friday, February 21, 2020 10:20 AM
To: Thompson, Ryder; Hipp, Dawn; Hunnell, Daniel; Lauren Hutson; _RegStaff - Edisto Conference Room; Watts, Victoria
Subject: [External] RE: PUI Meeting

We have out of office meetings next week. A few times open. Lauren sending you the reconciliation you requested in Wednesday's meeting. What is the subject of this meeting?

Mark

-----Original Appointment-----

From: Thompson, Ryder <rthompson@ors.sc.gov>
Sent: Friday, February 21, 2020 9:55 AM
To: Hipp, Dawn; Hunnell, Daniel; Mark Daday; Lauren Hutson; _RegStaff - Edisto Conference Room; Watts, Victoria
Subject: PUI Meeting
When: Tuesday, February 25, 2020 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Edisto Conference Room

Proposed PUI meeting with technical experts. Please let me know if you have any issues with this meeting time.

Thank you



Ryder Thompson
Director, Utility Rates & Services
Office of Regulatory Staff

✉ RTHOMPSON@ORS.SC.GOV ☎ (803) 737-0664

📍 1401 Main Street, Suite 900
Columbia, SC 29201

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NOTE THE CHANGE IN EMAIL ADDRESS. PLEASE UPDATE YOUR RECORDS.

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

Thompson, Ryder

From: Thompson, Ryder
Sent: Friday, February 21, 2020 11:46 AM
To: Mark Daday; Hipp, Dawn; Hunnell, Daniel; Lauren Hutson; _RegStaff - Edisto Conference Room; Watts, Victoria
Subject: RE: [External] RE: PUI Meeting

Hi Mark,

This was a follow up to our previous meeting. I had an action item to set up a call or face to face meeting with the tech experts. Please let me know what your preference is and I will try to schedule it. Tuesday is our preferred day.

Thank you.

Ryder

From: Mark Daday <mdaday@NiAmerica.com>
Sent: Friday, February 21, 2020 10:20 AM
To: Thompson, Ryder <rthompson@ors.sc.gov>; Hipp, Dawn <dhipp@ors.sc.gov>; Hunnell, Daniel <dhunnell@ors.sc.gov>; Lauren Hutson <LHutson@NiAmerica.com>; _RegStaff - Edisto Conference Room <Edistoconfrm@ors.sc.gov>; Watts, Victoria <vwatts@ors.sc.gov>
Subject: [External] RE: PUI Meeting

We have out of office meetings next week. A few times open. Lauren sending you the reconciliation you requested in Wednesday's meeting. What is the subject of this meeting?

Mark

-----Original Appointment-----

From: Thompson, Ryder <rthompson@ors.sc.gov>
Sent: Friday, February 21, 2020 9:55 AM
To: Hipp, Dawn; Hunnell, Daniel; Mark Daday; Lauren Hutson; _RegStaff - Edisto Conference Room; Watts, Victoria
Subject: PUI Meeting
When: Tuesday, February 25, 2020 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Edisto Conference Room

Proposed PUI meeting with technical experts. Please let me know if you have any issues with this meeting time.

Thank you



Ryder Thompson
Director, Utility Rates & Services
Office of Regulatory Staff

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ATTACHMENT C

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